

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Supreme Judicial Court
for Suffolk County
Docket SJ-2025-

Boston Municipal Court
Central Division
Docket No. 2001CR000384

COMMONWEALTH

v.

WILSON MARTELL-LEBRON

DEFENDANT'S PETITION
PURSUANT TO G.L. C. 211, § 3 (VERIFIED)

I. INTRODUCTION

This petition challenges the denial of the Defendant Wilson Martell-Lebron's motion to dismiss under Mass. R. Crim. P. 36. Five-hundred sixteen days of continuances - regarding which he clearly objected on the record¹ - have elapsed. The delay at issue flows from court congestion, lack of interpreter services, and Commonwealth's continuance requests. The Court made no findings that these continuances were in the interests of justice. As a matter of black letter law, the case cannot proceed to trial. But the district court has repeatedly defied the law by denying Mr. Martell-Lebron's motion to dismiss,

¹ Or regarding which the parties agree the delay is non-excludable by rule.

forcing him to appear again and again for a trial which is a legal nullity.

Ordinary channels of relief will be of no consolation to Mr. Martell-Lebron; extraordinary relief is necessary to prevent a miscarriage of justice. That is because, if Mr. Martell-Lebron is forced to appear for trial yet again in a case which, as a matter of law, cannot be tried, he will be deported. He would not be if the district court followed the law. This is precisely the type of scenario where extraordinary relief should be granted; there is no other avenue of relief available.

II. SINGLE JUSTICE REVIEW SHOULD BE GRANTED IN THIS MATTER

Mr. Martell-Lebron has a meritorious, though not substantially considered, motion to dismiss that renders the prosecution against him a nullity.

Mr. Martell-Lebron acknowledges that he cannot have his G.L. 211 § 3 petition heard as a matter of right. The SJC has said so "many times[.]" Ramos v. Commonwealth, 485 Mass. 1004, 1004 (2020) (citations omitted). However, "a single justice may, in his or her discretion, entertain [this] petition on the merits," Cepeda v. Commonwealth, 478 Mass. 1018, 1019 (2018), as occurred in Burton v. Commonwealth, 432 Mass. 1008, 1008 n.1, (2000). The Single Justice should exercise that discretion here.

The standard for a Single Justice to exercise their extraordinary power is "satisfied" in cases where, "although

appellate review of the judge's order may be available in the ordinary course, the delay potentially could render this remedy inadequate." In re Isabelle, 459 Mass. 1006, 1006 (2011).

These are not ordinary times; they are extraordinary. Under the current federal regime, ICE agents stalk our halls of justice to drag family members away from this country, placing ordinary remedies out of reach. Mr. Martell-Lebron is an undocumented immigrant. If this Court does not intervene, he will be snatched away before he can vindicate his trial rights, let alone his appellate rights. Absent this Court's intervention, the denial of his rights will be irreversible. See Costarelli v. Commonwealth, 374 Mass. 677, 679-80 (1978).

This case is distinguishable from Rosencranz v. Commonwealth, 472 Mass. 1011, 1012 (2015). There, the petitioner argued that "the alleged violation of his right to a speedy trial cannot effectively be remedied through the ordinary appellate process because . . . the pending case adversely affects his ability to practice law or to secure other employment." The court rejected that argument, noting that "collateral consequences attendant to the pendency of criminal proceedings – such as 'continued anxiety, community suspicion and other social and economic disabilities' – do not necessarily render the regular appellate process inadequate for speedy trial claims." Id. (emphasis added).

In Rosencranz, the harm alleged was temporary - it delayed the defendant's ability to secure employment. The harm alleged here is permanent and irrevocable. If the Single Justice does not hear this petition, Mr. Martell-Lebron will be deported permanently. Thus, his ability to seek relief will not be delayed by resorting to the ordinary appellate process; it will be extinguished altogether because he will not be here to seek it.

Where, as here, the Boston Municipal Court judges have repeatedly ignored binding precedent that establishes a violation of his speedy trial rights, and the only avenue of relief is by this petition, this Court must intervene.

Relief is appropriate "at whatever stage in the proceedings it becomes necessary to protect substantive rights." Barber v. Commonwealth, 353 Mass. 236, 239 (1967). That stage in the proceeding is now.

III. PRIOR PROCEEDINGS

Mr. Martell-Lebron was arraigned on January 23, 2020².

His pretrial conference, initially scheduled for March 18, 2020, was repeatedly continued due to COVID-related court

² Unless otherwise noted, the dates referenced are reflected on the paper docket (exhibit 1) or the masscourts.org docket (exhibit 2). The facts stated are either contained in the docket or averred as true by the undersigned.

closures (excludable time per the Court's standing order), ultimately taking place on October 27, 2020.

Mr. Martell-Lebron filed a motion to suppress, which the Court denied on April 29, 2022. The case was set for trial on August 17, 2022. Mr. Martell-Lebron's counsel withdrew from the case on July 28, 2022. Undersigned counsel entered an appearance on September 15, 2022. Counsel moved to reopen the suppression motion, which motion was denied on May 19, 2023. The case was marked for trial on August 29, 2023.

Following several continuances, all but one of which were over his explicit objection, Mr. Martell-Lebron filed a Rule 36 Motion to Dismiss (exhibit 3) on October 2, 2024. In its opposition (exhibit 4), the Commonwealth conceded 172³ days of non-excludable delay - 55 days from arraignment to the first pretrial hearing, two 21-day periods to file pretrial motions after counsel filed an appearance, and 75 days where Mr. Martell-Lebron objected to a continuance of a jury trial on March 27, 2024.

³ In reviewing this petition, the defendant identified miscalculations in elapsed days, such as in the first motion arguing 76 days had elapsed instead of 75, or in another instance arguing 83 days instead of 85. Similar errors resulted in overstating the elapsed time by 1-2 days. Undersigned has carefully verified these dates to correct any mistakes. All calculations in this petition reflect the corrected number. Even with these errors in the original filings, the non-excludable days still far exceed the 365-day limit the Commonwealth must justify.

On October 10, 2024, the Commonwealth filed a motion to advance and change the event of the previously scheduled trial date to status (exhibit 6). The Commonwealth was informed that due to a shortage of judges, the case was unlikely to be reached for trial. The defense did not agree to continue the trial or the hearing, but did assent to the Commonwealth changing the hearing from a trial date to a status date.

The case was called again on October 16, 2024. The Honorable Justice James M. Stanton held a hearing on the motion to dismiss, took it under advisement, and continued the trial over Mr. Martell-Lebron's objection as noted on the docket (exhibit 2, 029). On November 12, 2024, Judge Stanton denied the motion in a margin endorsement (exhibit 5).

Undersigned counsel obtained copies of the paper docket (exhibit 1), which confirmed several additional periods when Mr. Martell-Lebron objected to continuances which objections were not reflected on the electronic docket report. Specifically, the paper docket reflects that Mr. Martell-Lebron objected to continuances on October 21, 2021 (90 days) (exhibit 1, 005) and January 23, 2024 (64 days) (exhibit 1, 013). Had these two dates been included in the Commonwealth's opposition, it would have resulted in an agreement that at least 326 days were non-excludable.

Reviewing his file and notes, undersigned counsel realized that the continuance of an October 30, 2023, trial date was also over Mr. Martell-Lebron's objection, which objection was not apparent on the docket. Undersigned counsel obtained a transcript (exhibit 7) of that hearing which reflected the Court continued the trial to January 23, 2024, over Mr. Martell-Lebron's objection. With this transcript in hand, counsel filed a motion to amend the docket (exhibit 8) to reflect that the continuance was objected-to. With that additional objection, there would be 85 more non-excludable days, bringing the total the parties would have agreed were non-excludable to 411 days.

On December 2, 2024, Mr. Martell-Lebron filed a second Rule 36 motion to dismiss (exhibit 9), given the additional dates noted in the paper docket, the October 30, 2023, objection, and the objection to the continuance on October 16, 2024.

On December 10, 2024, both parties answered ready for trial. The Honorable Paul Treseler considered and denied the second Rule 36 motion to dismiss. As a result of the unavailability of a Spanish interpreter, the case was continued for trial again over the "strenuous objection" of the defense. The Court invited the defense to file its motion to dismiss again for a de novo hearing. The case was marked first case out with no further continuances for January 29, 2025.

On January 14, 2025, the defense filed its memorandum in support of de novo hearing on the motion to dismiss (exhibit 10). On January 24, 2025, the Commonwealth filed a motion to continue the trial as its witnesses were unavailable. The Court (Treseler, J.), continued the trial "[o]ver Defendant's strenuous objection," but kept the matter on for its original date for a motion hearing on the previously filed de novo motion.

The Commonwealth filed its opposition to Mr. Martell-Lebron's de novo motion later that same day (exhibit 11). For the first time, the Commonwealth⁴ alleged that Mr. Martell-Lebron did not need an interpreter, and that in any event since the continuances were for purposes of him being able to understand the proceedings, they were excludable under Rule 36.

On January 29, 2025, the Honorable Richard Sinnott heard the parties on the motion to dismiss, denied it, and scheduled the case for trial in April. For the first time in the 1,833 days that the case had been pending, the Court made findings

⁴ On this date, and almost every other date since counsel filed his appearance in this case, the Commonwealth was represented by a different "special" prosecutor. The assigned "special" prosecutors are not full-time employees of the Suffolk County District Attorney. Rather, they are attorneys on loan from law firms in the city. It is counsel's understanding that these attorneys are newer firm acquisitions sent to the Boston Municipal Court to develop their courtroom skills so that they can be more effective assets for their employers.

that the interests of justice in granting the continuance outweighed Mr. Martell-Lebron's right to a speedy trial.

The defendant filed his notice of appeal (exhibit 12) as to the denial of the motion to dismiss on February 21, 2025.

The case is now scheduled for trial again on March 27, 2025.

IV. ARGUMENT

"Under Mass. R. Crim. P. 36, a criminal defendant who is not brought to trial within one year of the date of arraignment is presumptively entitled to dismissal of the charges unless the Commonwealth justifies the delay. The delay may be excused by a showing that it falls within one of the 'excluded periods' provided in rule 36 (b) (2), or by a showing that the defendant acquiesced in, was responsible for, or benefited from the delay." Commonwealth v. Spaulding, 411 Mass. 503, 504 (1992) (emphasis added, citations omitted).

As of the date of the last hearing on Mr. Martell-Lebron's motion to dismiss, **1,833 days** had elapsed. Mr. Martell-Lebron agrees that the vast majority of that time is excludable. But **516 days** are not.

The delay in this case can be divided into five categories: (1) delay non-excludable by rule; (2) delay non-excludable because defense counsel objected to a trial continuance; (3) delay non-excludable because the defense objected to the

continuance of a motion to suppress where the delay was attributable to the Commonwealth being unprepared; (4) excludable delay because defense counsel did not object or for other reasons; and (5) excludable delay because the court made specific findings that the interests of justice in granting the continuance outweighed speedy trial concerns.

A. Category (1) – Non-Excludable Time by Rule (97 Days)

The first category requires little discussion. The parties agree that the initial period from when Mr. Martell-Lebron was arraigned on January 23, 2020, until his initial pretrial conference on March 18, 2020, is not excludable (**55 days**). After excludable delays due to this Court's emergency orders regarding the COVID-19 pandemic, the speedy trial clock was tolled for several months. See Commonwealth v. Lougee, 485 Mass. 70 (2020). Ultimately the clock began again at the October 27, 2020, pretrial conference, affording him **21 days** (not excludable) to file any pretrial motions. Commonwealth v. Vil, 101 Mass. App. Ct. 175, 182 (2022). The undersigned filed an appearance after prior counsel withdrew,⁵ which permitted an additional **21 days** (not excludable) to file motions. Id. at 183. The parties agree that these **97 days** are non-excludable.

B. Category (2) – Trials Continued Over Objection (329 Days)

⁵ The time where Mr. Martell-Lebron did not have counsel is similarly excluded from any amount of delay.

In addition to the **97 days** that the parties agree are non-excludable, several trial continuances were over Mr. Martell-Lebron's explicit objection, rendering them non-excludable.

1. October 30, 2023 to January 23, 2024

The docket fails to reflect that defense counsel objected to a continuance of the trial from October 30, 2023, to January 23, 2024. The transcript of the October 30, 2023, hearing⁶ reveals that a civil trial was sent out for empanelment and that the Spanish interpreter for Mr. Martell-Lebron was not available yet. TR.3.7-11.⁷

The following exchange occurred (TR 4.1-8):

Judge: [I]f you can communicate a date to your client, I would give it to you, but if not, we're going to have to wait for an interpreter.

Counsel: [W]e're not agreeing to the date.

See exhibit 7.

At a later call, the Court explained that there was another "backup" case for trial if the civil trial fell through, leaving Mr. Martell-Lebron's case "in third place." TR 5.17-21.

⁶ "Although 'the docket and minutes or in this case the log of the clerk are prima facie evidence of facts recorded therein,' they may be supplemented by other evidence." Commonwealth v. Wysocki, 28 Mass. App. Ct. 45, 48 (1989), quoting Barry v. Commonwealth, 390 Mass. 285, 289 (1983) (cleaned up).

⁷ Reference to the transcript (exhibit 7) shall be as follows: TR [page number].[line number(s)].

The Court again offered a date, but counsel stated he would "weather this morning" even if it meant waiting "a few hours." TR 6.13-19. Defense counsel explained "I'll wait . . . because I can't agree with a date." TR7.1-5.

When the interpreter later became available, the case was called again. The Court indicated "I do not have a session for you today. I know that you are not agreeing to a date." TR 8.4-5. After conferring regarding calendar issues, the Court continued the trial to January 23, 2024. The Court made no findings that the delay was in the interests of justice.

This continuance period results in **85 days** of non-excludable time.

2. January 23, 2024 to March 27, 2024

On January 23, 2024, the parties appeared for trial. Because the Court failed to secure a Spanish interpreter, the case was continued to March 27, 2024. Mr. Martell-Lebron timely objected to the continuance as reflected on the docket. The Court made no findings that the delay was in the interests of justice.

JAN 23 2024		Treseler, J / Kus	
Room 21	Defend	Not In Court	No Spanish Interpreter
Atty Erkan	Appears		present when case is called
Footage 9:32	ADA Paschak		Matter continued over Deft.
APO 9:55	Greene		objection due to court congestion
(Personal Recognizance To March 27)			
Room 15 Event Jury Trial			

See exhibit 1, p. 013.

As the objection was erroneously not reflected on the electronic docket, the Commonwealth did not concede this delay was non-excludable.

However, because the paper docket shows the objection, the **64 day** delay is non-excludable.

3. March 27, 2024 to June 10, 2024

On March 27, 2024, the parties appeared for trial. The case was continued to June 10, 2024, and marked first case out. Mr. Martell-Lebron timely objected to the continuance, as reflected on the docket. The Commonwealth concedes this additional **75 day** delay is non-excludable.

- MAR 27 2024 Continued-	
* Defendant's Motion in Limine to exclude - Denied	
* Discovery is closed for this matter	
Personal Recognizance to	June 10
Room 15	Event Jury Trial
* 1 st Case out	
* Continued over deft objection	
* Spanish int. to be requested	

Stanton, J (em)

See exhibit 1, p. 015.

4. October 16, 2024 to December 10, 2024

On October 16, 2024, the parties appeared for the previously scheduled trial date. On October 10, 2024, the Commonwealth moved to convert the case to status as a result of

a shortage of judges (exhibit 6)⁸. The defense rejected the Commonwealth's offer to select a new date, instead seeking to pursue the previously filed motion to dismiss.

On October 16, 2024, the Court heard arguments on Mr. Martell-Lebron's first motion to dismiss, which he filed on October 2, 2024. The Court (Stanton, J.) denied the motion on November 12, 2024 - during a previously ordered continuance period.

Regarding the trial, the Court (Stanton, J.) continued it for trial to December 10, 2024. Mr. Martell-Lebron timely objected to the continuance, as reflected on the docket.

10/16/2024	After full hearing, motion to dismiss is taken under advisement. Defendant objects to continuing jury trial. Judge: Stanton, Hon. James Martin
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See exhibit 2, p. 029.

The Court made no findings that the delay was in the interests of justice.

The **55 days** reflecting the continuance over Mr. Martell-Lebron's objection from October 16, 2024, to December 10, 2024, are non-excludable.

⁸ This motion to convert the trial to a status hearing is of no consequence to the Rule 36 calculations as Mr. Martell-Lebron concedes he did not lodge an objection to the continuance between June 10, 2024, and October 16, 2024.

5. December 10, 2024 to January 29, 2025

On December 10, 2024, the parties appeared ready for trial but, again, the trial could not go forward because no interpreter was available. The Court ordered the case marked "first case out" and ordered no further continuances. Mr. Martell-Lebron, again ready for trial with his witnesses summonsed, objected such that the docket reflects the continuance was over his "strenuous" objection.

12/10/2024	Commonwealth reports ready for Jury Trial. Defendant answers ready for Jury Trial. Both parties object due to no Spanish interpreter. Defense counsel strenuous objection is noted. Judge: Treseler, Hon. Paul
12/10/2024	The Court enters the following order: A de Novo hearing on next date for Rule 36. 1st Case out. No further continuance. Judge: Treseler, Hon. Paul

See exhibit 2, p. 030.

The case was scheduled for trial on January 29, 2025. The Court made no findings that the continuance was in the interests of justice.

The **50-day** delay is non-excludable.

Adding the delay flowing from objected-to continuances of the trial date, the total reaches **426 days** of non-excludable time.

C. Category (3) – Motion Continued Over Objection (90 Days)

The continuance periods described in categories one and two, discussed above, results in **426 days** of non-excludable delay.

The record reflects an additional period of non-excludable delay arising from the Commonwealth's failure to answer ready at a motion to suppress hearing.

On August 4, 2021, the defense filed a motion to suppress. The motion was scheduled for August 12, 2021, and then continued (by agreement) to October 21, 2021, "a reasonable time in which to schedule a hearing." Commonwealth v. Roman, 470 Mass. 85, 94 (2014). That time is excluded by rule. Mass. R. Crim. P. 36 (b) (2) (A) (v). What is not excluded is the delay attributable to the Commonwealth requesting a continuance because they were not ready for the motion to suppress hearing.

OCT 21 2021	
Room <u>15</u>	Defendant Not in Court <u>(circled)</u>
Atty <u>Flore K</u>	Commonwealth Answers Ready <u>(circled)</u> Not Ready For <u>(circled)</u> Motion to Suppress <u>(circled)</u>
Room <u>9:43</u>	Defendant Answers Ready / Not Ready For <u>(circled)</u> Trial <u>(circled)</u>
APD <u>Galay</u>	<u>Commonwealth Requests Next Date</u>
Personal Recognizance To <u>JAN JO</u>	<u>Allowed over Def's Objection</u>
Room <u>15</u> Event <u>Motion to Suppress</u>	* Spanish Interpreter Needed for Next Date.
	Trenber, J / KN

See exhibit 1, p. 005.

The defense objected, the objection was noted on the docket, and the case was rescheduled for January 19, 2022, with no factual findings that the continuance served the ends of justice. Where this necessarily resulted in a longer, and unreasonable, continuance because the Commonwealth was not

ready, the delay is not excluded from the rule 36 calculation. The **90 days** are non-excludable.

With this additional delay, the total reaches **516 days** of non-excludable time.

D. Categories (4) – Other Delay (0 Days)

On various other occasions, the case was continued with Mr. Martell-Lebron's consent or at his request. He concedes that those delays, as well as delay flowing from the COVID-19 pandemic during which the speedy trial clock was paused, accounting for a total of 1,317 days, are excludable.

E. Category (5) – 36(b) (2) (F) Finding (0 Days)

For the first time, the Court on January 29, 2025, made a factual finding pursuant to Mass. R. Crim. P. 36 (b) (2) (F) that the continuance of the January 29, 2025, trial date was in the interests of justice due to the "unavailability of an essential witness for the Commonwealth." While Mr. Martell-Lebron does not concede that such a finding was supported,⁹ it does not matter for purposes of resolving this motion because there is more than enough delay to otherwise mandate dismissal.

⁹ Contrast Commonwealth v. Davis, 91 Mass. App. Ct. 631, 637 (2017) ("the rule requires more or it would be meaningless").

F. Commonwealth's Failure to Justify 516 Days of Delay

1. Objected-to continuances due to court congestion

Below, the Commonwealth argued that the continuances resulting from court congestion were excludable, notwithstanding Mr. Martell-Lebron's specific objection, and notwithstanding the absence of the requisite findings under Rule 36 (b) (2) (F).

The argument is frivolous to the point that it raises ethical concerns as settled law is clearly to the contrary.¹⁰ The Appeals Court made clear in Davis that "delays attributable to court congestion – if the defendant objects – are not excludable from the rule 36 calculation, unless the judge makes the necessary findings under rule 36 (b) (2) (F)." 91 Mass. App. Ct. at 632 (emphasis added, citations omitted). The "necessary findings" are "that the ends of justice served by taking such action [granting a continuance over the defendant's objection] outweighed the best interests of the public and the defendant in a speedy trial." Mass. R. Crim. P. 36 (b) (2) (F).

Each of the continuances described in Section IV.B. of this petition (totaling 329 days) occurred over Mr. Martell-Lebron's explicit objection, flowed from court congestion, and were unaccompanied by the findings mandated by Rule 36 (b) (2) (F).

¹⁰ Mass. R. Prof. C. Rule 3.1, entitled "Meritorious Claims and Contentions," provides that "A lawyer shall not . . . assert or controvert an issue [in a proceeding] unless there is a basis in law and fact for doing so that is not frivolous."

The Commonwealth's argument that these periods are excludable are, thus, frivolous and contrary law.

The SJC "has repeatedly stated that 'normally court congestion is not a sufficient justification for the denial of the right to a speedy trial.'" Id. at 634 (citations omitted). As noted in the Davis ruling, potential unfairness can arise from penalizing the Commonwealth when the Commonwealth is not directly responsible for the delay. But the Court pointed out that the Commonwealth can neutralize that potential unfairness by asking the trial judge to make factual findings that the continuances were excludable for Rule 36 purposes. Id. at 637. It did not.

Neither did the Commonwealth here seek a finding that the interests of justice outweighed Mr. Martell-Lebron's speedy trial rights. By failing to avail itself of this procedure, the Commonwealth cannot be heard to complain.

And although unnecessary to resolve this case, because Davis makes clear that objected-to delay due to court congestion is non-excludable absent supported Rule 36 (b) (2) (F) findings, it is worth noting that the Commonwealth's claim — that not excluding continuances due to court congestion is unfair — is not only legally incorrect but also ignores its own role in causing the congestion that forced the continuances. The Commonwealth complains that the rule in Davis is unfair because

the Commonwealth was otherwise ready for trial (there and in this case) but fails to acknowledge that it has no small hand in the court congestion which prompted the continuances. The Commonwealth, as the prosecuting authority, decides what cases to prosecute. Spaulding, 411 Mass. at 506 ("the 'primary responsibility for setting a date for trial lies with the district attorney'"), quoting Barry, supra at 296 n.13. It also has a say in which cases it prioritizes for trial - as it did in this case when, for example, on December 10, 2024, the Commonwealth indicated it would prefer to try one of the other cases that was on for trial that day rather than the instant matter. Rule 36 requires a balance that places a duty on the Commonwealth, as the entity filing cases, to ensure it prosecutes them in a timely manner. When the Commonwealth, as in this case, prioritizes prosecuting other matters over protecting a defendant's speedy trial rights, it is entirely fair to hold the Commonwealth accountable for the resulting delay.

2. Mr. Martell-Lebron "protracted" the delay

The Commonwealth next argued that the continuances should not be chargeable to it because Mr. Martell-Lebron "protracted" the delay by not being available for sooner proposed continuance dates. Its argument is supported by neither legal citation, facts, nor common sense.

The Commonwealth raises this argument in connection with

the continuance period from October 30, 2023, to January 23, 2024, discussed in Section IV.B.1 of this petition. At issue is the following exchange:

Judge: I know that you are not agreeing to a date. I can put this over one day. TR 8.9-11.

Counsel: [I]t would not be helpful to put this over one day . . . I'm in a bit of a tough spot. TR 8.21.

I can come in on the 7th [a one week continuance]. TR 10.1-3

Judge: Are we all set for November 7? TR 10.1

Counsel: I'm sorry, Judge. I just looked on my calendar. I'm in New York on a case So why don't we just go back to January because I'm in a tough spot between now and then The 23rd of January please. TR 10.2-13.

See exhibit 7.

First, as a factual matter, the record does not support the Commonwealth's contention that defense counsel "protracted" the case by selecting a long date. On the contrary, defense counsel initially selected a date just one week out, only asking for a different date upon the realization that he had a conflicting prior court commitment. Only when he discovered his calendar would not permit an earlier date did defense counsel select a date that was further out.

Second, if the Commonwealth suspected gamesmanship - a ploy to exploit the continuance by running out the speedy trial clock - the rules provided a clear mechanism to foil that plot. The

Commonwealth could have insisted that counsel describe in detail his previous engagements and, if his calendar showed earlier availability, either insist on an earlier date or request that the Court make findings pursuant to Rule 36 (b) (2) (F) that all or a portion of the continuance period should be excluded from the speedy trial clock. Again, the Commonwealth failed to avail itself of the legally available means of protecting its interests; it cannot now object to the consequences of its own negligence.

3. The services of an interpreter were a "benefit" which Mr. Martell-Lebron could enjoy only by waiving his right to a speedy trial

The Commonwealth's next argument is that Mr. Martell-Lebron "benefited" from some of the continuances because they were necessitated by the Commonwealth's failure to furnish a court ordered interpreter. This argument is as unavailing as the others, but more pernicious.

First, the Commonwealth's contention is frivolous and, as with the previous argument, unethical because it is contrary to settled law. "[A] claim of benefit cannot override an express objection." Davis, 91 Mass. App. Ct. at 638, citing Commonwealth v. Rogers, 448 Mass. 538, 547 (2007) ("Hindsight claims that a defendant benefited from delay should not override his express statement that he does not agree to such delay When rule 36 rights are being expressly asserted, we will not second-guess

the defendant's strategic choice and conclude that he was really better off for having endured the objected-to delay"). Thus, even if complying with the statutory and constitutional right to an interpreter was a "benefit" against which the right to a speedy trial could be sacrificed, the Commonwealth's argument flies in the face of settled law given Mr. Martell-Lebron's objection.

Second, the provision of rights to which a defendant is constitutionally and statutorily entitled is not a "benefit" which a defendant must sacrifice if he wishes to protect his speedy trial rights. G.L. c. 221C §§ 2, 3, creates a statutory right to court-appointed qualified or certified interpreter, which right may only be waived by the defendant. Moreover, the SJC has recognized the commonsense reality that the failure to furnish an interpreter is an error of constitutional dimension: "As a matter of fundamental fairness, a defendant has a due process right to understand the proceedings. A judge also is required to provide a non-English speaker with a competent interpreter in order to safeguard the defendant's rights under the Sixth Amendment to the United States Constitution, and art. 12 of the Massachusetts Declaration of Rights, to be present at trial and to confront adverse witnesses [and] in order to consult meaningfully with counsel during the trial."

Commonwealth v. Sifa Lee, 483 Mass. 531, 540 (2019) (citations,

quotations omitted; cleaned up).

Contrary to the Commonwealth's position, constitutional and statutory rights are not collateral "benefits" which a defendant can be forced to trade or forfeit to exercise other rights, such as the right to a speedy trial. Rather, they are the most important components of a fair proceeding. In the absence of those fundamental rights, no trial can occur. Thus, the absence of an interpreter -- which is essential for upholding the constitutional rights of a non-English-speaking defendant -- obviously renders a trial impossible. The unavailability of an interpreter, like the unavailability of jurors¹¹, or the unavailability of court-appointed counsel¹², is chargeable to the Commonwealth, as is a continuance flowing from that unavailability.^{13 14}

¹¹ Davis, 91 Mass. App. Ct. at 637.

¹² Lavallee v. Justices in the Hampden Superior Court, 442 Mass. 228, 232 (2004).

¹³ The Commonwealth also argued that the absence of an interpreter rendered the defendant "unavailable" such that the related continuance periods are excludable under Rule 36 (b) (2) (A) ("Any period of delay resulting from the absence or unavailability of the defendant [which occurs when] his whereabouts are unknown and he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence.") Undersigned is disinclined to address this absurd contention.

¹⁴ In his written opposition dated January 24, 2025, the prosecutor wrote that continuances flowing from the lack of an interpreter "redound to the Defendant's obvious benefit and are

There is an additional, troubling layer to the Commonwealth's position. During the most recent oral argument on Mr. Martell-Lebron's motion to dismiss (before Judge Sinnott), the Commonwealth suggested that Mr. Martell-Lebron was feigning not speaking English and, as a consequence, did not really need an interpreter. It follows, then, that the continuances due to the absence of an interpreter are chargeable to Mr. Martell-Lebron. This claim is bereft of factual support; the prosecutor had never spoken with Mr. Martell-Lebron to assess his language skills. As counsel for Mr. Martell-Lebron, I can also represent, as an officer of the Court, that it is false. While Mr. Martell-Lebron speaks some English, he does not speak nearly enough to understand the proceedings and participate meaningfully. Contrast G.L. c. 221C § 1 (defining "Non-English speaker" as "a

excludable time." He supported that contention by citation to Commonwealth v. King, 2013 Mass. App. Unpub. LEXIS 993, at *8-9 (Mass. App. Ct. Oct. 21, 2013), characterizing the panel's ruling as "reversing speedy trial dismissal where seven continuances occurred due to unavailability of American Sign Language interpreter." But what the prosecutor left out is the fact that the panel so ruled only because the defendant failed to object to the continuances. Id. at *8; * 5 ("He assented to the earlier continuances[.] Accordingly, King acquiesced in the delays and is not entitled to dismissal under rule 36.")

The Commonwealth also left out the panel's explicit recognition that "[t]o be sure, the lack of translators is attributable to the Commonwealth, though not to the prosecutor, since it is the responsibility of the Commonwealth to provide ASL interpreters." Id.

This is yet another example of egregiously unethical practice in misleading the Court.

person who cannot speak or understand, or has difficulty in speaking or understanding, the English language, because he uses only or primarily a spoken language other than English") (emphasis added). It is also irresponsible and unfair. It shows the implicit bias and indignities Hispanic and other minority individuals in the criminal justice system face every day¹⁵.

4. The speedy trial clock stopped while the motion to dismiss was under advisement

Mr. Martell-Lebron filed his first Rule 36 motion to dismiss prior to the October 16, 2024, trial date. On the trial date, the Court (Stanton, J.) ordered a continuance due to court congestion, heard the motion to dismiss, took it under advisement, and set the case for a new trial date of December 10, 2024, over Mr. Martell-Lebron's objection. Meanwhile, on November 12, 2024, Judge Stanton denied the motion.

Prior to the next trial date (December 10, 2024), Mr. Martell-Lebron filed his second Rule 36 motion to dismiss. On December 10, 2024, the Court (Tresseler, J.) ordered a continuance of the trial to January 29, 2025, because no Spanish interpreter was available, ordered the case marked "first case

¹⁵ As discussed in King, at *8, and in note 14, *supra*, the delay that results from being unable to translate the proceedings in English falls on the Commonwealth, not the prosecutor. But the shame arising from perpetuating these biased and prejudiced attitudes towards non-native English speakers, rests solely on the special prosecutor who thought it appropriate to voice them in Court with no factual support for his arguments.

out," and ordered no further continuances. Mr. Martell-Lebron, again ready for trial with his witnesses summonsed, objected such that the docket reflects the continuance was over his "strenuous" objection. Judge Treseler also considered and denied the motion to dismiss with an invitation to have it heard "de novo" on the next date.

Below, the Commonwealth argued that the period during which Judge Stanton had the motion under advisement is excludable. It also argued that because Judge Stanton "calendared a de novo hearing" on the motion to dismiss, the continuance of the trial from December 10, 2024, to January 29, 2025 was excludable. The arguments are meritless.

Rule 36 (b) (2) (A) includes in the definition of "excludable periods":

(v) delay resulting from hearings on pretrial motions" and

(vii) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement.

(emphasis supplied).

The operative question is thus whether the pretrial motion "result[ed]" in "delay" or "delay [was] reasonably attributable" to resolving the motion.

No "delay" "resulted" from or was "reasonably attributable" to the motions to dismiss in this case; the exclusion thus does

not apply. The motions were heard on the trial dates, and the trial dates were continued due to court congestion or the lack of an interpreter - reasons wholly independent of the motions to dismiss. The delays did not "result from" the motions; they resulted from the court's inability to conduct the trial. Similarly, the continuance period following the October 16, 2024, scheduled trial, during which time Judge Stanton had the motion to dismiss under advisement until November 12, 2024, is not "reasonably attributable" to his having the motion under advisement. The continuance had already been ordered and his concurrent consideration of the motion did not cause the continuance period or enlarge any delay at all.

Thus, neither subpar (v) nor subpar (vii) exclusions apply to exclude time in connection with those motions.

5. Delay flowing from the Commonwealth's failure to answer ready at a motion to suppress is excludable time

The Defendant filed a motion to suppress on August 4, 2021, to be heard on the previously scheduled motion hearing date of August 12, 2021. The parties agreed to continue the hearing to October 21, 2021. On October 21, 2021, the Commonwealth requested a continuance, which request the Court granted over Mr. Martell-Lebron's affirmative objection. The Court set a new date of January 20, 2021.

Below, with no citation to law, the Commonwealth argued that this delay "resulted" from Mr. Martell-Lebron's motion to suppress and should thus be excluded under Rule 36 (b) (2) (A) (v) ("delay resulting from hearings on pretrial motions"). Once again, the Commonwealth's position is untenable.

The delay did not result from a "hearing" on a pretrial motion. It resulted from the Commonwealth's unpreparedness for that motion. The motion hearing was delayed because the Commonwealth asked for a new date.

Implicit in the Commonwealth's argument is the contention that the reason for the continuance is irrelevant, where the continuance is of a hearing on a pretrial motion. In essence, the Commonwealth contends that once a defendant files a pretrial motion (including the instant motion which complained of violation of constitutional rights), his speedy trial rights are placed in suspended animation. They remain suspended regardless of the reasons for the delay in resolving the motions, including when that delay flows only from the Commonwealth's unpreparedness. In essence, by filing a motion, the Commonwealth contends that defendants forfeit their right to a speedy trial until the Commonwealth is good and ready to respond to his complaints.

The position is meritless. Defendants need not sacrifice their speedy trial rights to vindicate their constitutional

rights. The rule specifically excludes delay resulting from "hearings" on pretrial motions. It does not exclude delay resulting from the Commonwealth's lack of readiness for that hearing. Accord Barry v. Commonwealth, 390 Mass. 285, 294 (1983) (the "filing of the motion, at least where a hearing promptly follows, tolls the running of the time in which a defendant must be tried") (emphasis supplied).

Commonwealth v. Lauria, 411 Mass. 63 (1991), is readily distinguishable. There, while the case languished in a pretrial posture, the prosecutor sent letters reminding the judge that motions remained outstanding. The defense lawyer, in contrast, did nothing to seek their resolution. The defendant then argued that the period the motions were pending should count against the Commonwealth. The Court rejected that argument, observing that "we are not persuaded that the . . . letters sent by the assistant district attorney should operate to relieve defense counsel entirely of their burden . . . had the prosecution done nothing, the defendants would have been required to inquire as to the status of the pending motions. In such a situation, [where the defendant did not press the motion, he] clearly could be found to have acquiesced in the delay." Id. at 69.

No such finding is warranted here. The delay in hearing the motion occurred because the Commonwealth was not ready, and Mr.

Martell-Lebron objected to the delay. The time is thus non-excludable.

V. CONCLUSION

For the foregoing reasons, this Court should allow the petition.

Respectfully submitted,
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Date: February 25, 2025

Verification

I, Murat Erkan, under oath, depose and say that the facts contained in this petition are true. As to facts regarding which I lack first-hand knowledge, I believe those facts as described herein to be true.

/s/ Murat Erkan
Murat Erkan

EXHIBITS

Exhibit 1 - Docket of Proceedings (paper)	001
Exhibit 2 - Docket of Proceedings (masscourts)	016
Exhibit 3 - Defendant's Motion to Dismiss	032
Exhibit 4 - Commonwealth's Opposition to Defendant's Motion to Dismiss on Speedy Trial Grounds	037
Exhibit 5 - Denial of Motion to Dismiss	042
Exhibit 6 - Commonwealth's Assented-To Motion to Advance and Change Event	044
Exhibit 7 - Transcript of October 30, 2023 Hearing . . .	047
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Exhibit 9 - Defendant's Memorandum in Support of De Novo Hearing Defendant's Second Motion to Dismiss	060
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Exhibit 11 - Commonwealth's Opposition to Defendant's Third Rule 36 Motion to Dismiss	073
Exhibit 12 - Notice of Appeal	081